

APPEAL NO. 020986
FILED JUNE 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 9, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first two months of the sixth quarter "subject to the adjustment to which the Carrier [appellant] is entitled due to the Claimant's late filing . . ." and that the claimant is not entitled to SIBs for the seventh and eighth quarters. The hearing officer's decision regarding the late filing for the sixth quarter and nonentitlement for the seventh and eighth quarters has not been appealed and has become final pursuant to Section 410.169.

The carrier appeals the partial entitlement to SIBs for the sixth quarter, arguing that for the period in question, the claimant was not "truly 'participating'" in a full-time vocational rehabilitation program (VRP) sponsored by the Texas Rehabilitation Commission (TRC). The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered in favor of the claimant.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The hearing officer's finding on direct result has not been appealed. At issue in this case is whether the claimant met the good faith requirement of Section 408.142(a)(4) by complying with the requirements of Rule 130.102(d)(2). Rule 130.102(d)(2) provides that a good faith effort to obtain employment has been met if the claimant "has been enrolled in, and satisfactorily participated in, a full time [VRP] sponsored by the [TRC] during the qualifying period."

The parties stipulated that the qualifying period for the sixth quarter was from March 31, 2001, through June 29, 2001. In evidence is an Individualized Plan for Employment (IPE) setting out certain criteria to be met. The IPE covers a period of time which includes the qualifying period for some services and ends just before the qualifying period for other services. Also in evidence is a form letter verifying that the claimant "has been participating in VR services. Eligibility date 7/28/00" signed and dated November 10, 2000. The claimant testified that he enrolled in and satisfactorily completed a number of short (four to eight hour) computer courses which had been "put together . . . and paid for by the [TRC]" during the sixth quarter qualifying period. The carrier argues that the claimant met none of the requirements of the IPE because he was only enrolled "in a small number of very short introductory computer courses." There is no evidence that the courses the TRC "put together" and "paid for" did not constitute satisfactory participation. We will not second-guess the TRC on what they consider satisfactory participation. See *also* Texas Workers' Compensation Commission Appeal No. 020933, decided May 31, 2002.

The carrier further argues that in subsequent quarters the claimant did not use the courses that he took and therefore he was not truly participating in the IPE. Again we decline, and indeed are unauthorized, to establish new or different conditions to Texas Workers' Compensation Commission rules. See Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248 (Tex 1999).

We reverse the hearing officer's decision only to the extent that he finds that the claimant is entitled to SIBs only "for the first two months of the sixth quarter." In Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, and Texas Workers' Compensation Commission Appeal No. 011426, decided August 8, 2001, we have held that participation in a TRC program does not have to span the entire qualifying period so long as it occurs "during" the qualifying period. We accept the hearing officer's findings that the claimant "was engaged in a full time vocational program through the Texas Workforce Commission [sic, should be TRC] for the first two months of the qualifying period" and that the claimant did not attempt to obtain employment during the final month. However, as noted in this paragraph, the full-time enrollment in a TRC program covers the entire qualifying period, not just the first two months.

We render a new decision by the omission of the words "the first two months of" in Conclusion of Law No. 4 and the first paragraph in the "Decision." The carrier is still entitled to an adjustment due to the claimant's late filing of his application for the sixth quarter.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge